13.

SUPREME COURT OF THE UNITED STATES:

No. 277.

L. P. WOODRUFF AND G. M. PARKER, PARTNERS UNDER THE NAME AND STYLE OF WOODRUFF & PARKER, PLAINTIFF IN ERROR,

vs.

JOHN PARHAM, TAX COLLECTOR OF THE CITY OF MOBILE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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a To the honorable the Judges of the Supreme Court of Alabama:

Your petitioners, L. T. Woodruff, Z. G. M. Parker, citizens of Mobile, and co-partners, using the name and the style of Woodruff & Parker, respectfully shows, that heretofore, to wit, on the 1st day of November, 1866, your petitioners brought their action in the Circuit Court of Mobile against John Parham, to recover damages for the wrongful seizure of plaintiff's goods, and such proceedings were thereon had, that said Circuit Court rendered judgment in favor of said defendant. Your petitioners appealed from said judgment to the honorable Supreme Court of Alabama, being the highest court of law and equity in the State of Alabama, on which appeal such proceedings were had that the judgment of said Circuit Court of Mobile was affimed, and a final judgment rendered against your petitioners, and in favor of said Parham. Your petitioners shows, that in said suit and proceedings, was drawn in question the validity of your authority exercised by said defendant as collector of taxes under a statute of the State of Alabama, entitled an act to incorporate the city of Mobile, approved 2d February, 1866, on the ground of their being repugnant to the Constitution of the United States, article 1, section 8, paragraph 3; and article 1, section 10, paragraph 2; and that said judgment and decision of said Supreme Court of Alabama, is in favor of such their validity.

Wherefore your petitioners pray that a writ of error upon said judgment of said Supreme Court of Alabama, which is the highest court of law or equity in said State, in which a decision in said suit could be had, returnable to the next term of the Supreme Court of the United States on first Monday of December, A. D. 1867.

Your petitioner will ever pray.

P. HAMILTON,
Att'y for Pet'rs.

JUNE 6, 1867.

Endorsed: Woodruff & Parker *vs.* Parham. Petition for writ of error to Sup. Co. U. S. Filed June 6, 1867. Phelan, cl'k. Presented and allowed June 6th, 1867. A. J. Walker, C. J.

c UNITED STATES OF AMERICA, *ss:*

b The President of the United States to the honorable Judges of the Supreme Court of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said [said] Supreme Court of Alabama, before you, or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between L. T. Woodruff & G. M. Parker, partners under the name and style of Woodruff & Parker, plaintiff, and John Parham, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in

question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the damage of the said Woodruff and Parker, plaintiffs, as aforesaid, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] LAWRENCE WORRALL,
Clerk of the Circuit Court of United States
for the fifth circuit and southern district of Alabama.

Allowed by A. J. WALKER,
Chief Justice of the Supreme Court of the State of Alabama.

[50 ct. rev. stamp]

Endorsed: Woodruff & Parker *vs.* Parham. Writ of error. Filed June 6th, 1867. Phelan, cl'k.

The United States of America to John Parham, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Alabama, in a cause decided in that court, at the term of first Monday of June, 1867, wherein L. T. Woodruff and G. M. Parker, co-partners under the name and style of Woodruff & Parker are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable A. J. Walker, Chief Justice of the Supreme Court of the State of Alabama, this 6th day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

A. J. WALKER, *J.C.*

On the 12th day of June, in the year of our Lord one thousand eight hundred and sixty-seven, personally appeared Henry T. Gaines before me, the subscriber, Lawrence Worrall, U. S. Commissioner for southern district of Alabama, and the said Henry T. Gaines, and makes oath that he delivered a true copy of the within citation to John Parham, on the eleventh day of June, 1867, and that said affiant is the deputy sheriff of Mobile county.

HENRY T. GAINES.

Sworn to and subscribed before me, at my office, in the city of Mobile, in the southern district of Alabama, this 12th day of June, A. D. 1867.

LAWRENCE WORRALL,
United States Commissioner in and for the Southern District of Alabama.

Received 10th June, 1867, and on the 11 day of June, 1867, I served a copy of the within citation on John Parham.

M. D. GRINNELL,
Sheriff Mobile county.
By HENRY T. GAINES, *D. S.*

Endorsed: Woodruff & Parker, *vs.* Parham. Citation. Filed June 6, 1867. Phelan, cl'k.

[Copy.]

d Know all men by these presents, that we, Lewis T. Woodruff, and Gideon M. Parker, partners under the firm name of Woodruff & Parker, and John D. Webster, are held and firmly bound unto John Parham, in the full and just sum of five hundred dollars, to be paid to the said John Parham, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 6th day of June, in the year of our Lord, one thousand eight hundred and sixty-seven.

Whereas, lately, at a term of the Supreme Court of Alabama, begun and held at Montgomery, on the first Monday of June, 1867, in a suit depending in said court between L. T. Woodruff, and G. M. Parker, partners using the name and style of Woodruff & Parker, plaintiffs, and John Parham, defendant, judgment was rendered against the said Woodruff & Parker, and in favor of the said John Parham, for the cost of said suit, in the Circuit and Supreme Courts of Alabama; and the said Woodruff & Parker having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Parham, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Woodruff & Parker, plaintiff's in error, shall prosecute said writ of error to effect, and answer all damages and costs, if they fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) L. T. WOODRUFF, [SEAL.]
G. M. PARKER, [SEAL.]
J. D. WEBSTER, [SEAL.]

Sealed and delivered in presence of—
(Signed) R. MONTAGUE ROGERS.

Approved by—
(Signed) A. J. WALKER,
Chief Justice Sup. Court.

I, John D. Phelan, clerk of the Supreme Court of Alabama, hereby certify that the foregoing on pages 1 and 2 is a true, perfect, and complete copy of the original writ of error bond, and approval of same, filed in my office on the 6th day of June 1867, in a cause wherein Woodruff & Parker, are plaintiff's in error, and John Parham, is defendant, which said bond is now on file in my office.

Witness: JNO. D. PHELAN, *Clerk.*

Endorsed: Copy. Woodruff & Parker *vs.* Parham. Writ of error bond. Filed June 6th, 1867. Phelan, clk. Filed 4th Dec. 1867.

Caption.

1 Be it remembered, that at a term of the Supreme Court of Alabama, began and held at the capitol in the city of Montgomery, on Monday the third day of June, in the year one thousand eight hundred and sixty-seven, (A. D. 1867,) there were present and presiding as judges of said court, honorable Abram J. Walker, chief justice; honorable Wm. M. Byrd, associate justice; honorable Thomas J. Judge associate justice; before whom the following proceedings were had, to wit:

There was filed in the office of the clerk of said Supreme Court on the 26th day of February, A. D. 1867, the following transcript of the record and proceedings in the case of Woodruff & Parker, (plaintiffs,) *vs.* John Parham, (defendant,) from the circuit court of Mobile county in said State; in the words and figures following, to wit:

THE STATE OF ALABAMA, *Mobile County:*

Be it remembered, that at a term of the Circuit Court of Mobile, and for the county and State aforesaid, began and holden at the court-house of said county, on the third Monday after the fourth Monday of October, A. D. 1866, viz: on the 29th day of December, 1866, the same being a day of the term of said court, the Honorable C. W. Rapier, judge presiding, the following proceedings were had, to wit:

Complaint.

Circuit Court.—Fall Term, 1866.

WOODRUFF & PARKER, plaintiff,
vs.
JOHN PARHAM, defendant.

THE STATE OF ALABAMA,
Mobile County:

2 Plaintiff's claim of the defendant five thousand dollars as damages, for wrongfully taking the following goods and chattels, the property of plaintiff, that is to say, fifty barrels of whiskey, and twenty cases of dry goods.

ANDERSON & BOND & HAMILTONS,
Pl'ff Att'y.

Circuit Court.—Fall Term, 1866.

THE STATE OF ALABAMA,
Mobile County:

To any sheriff of the State of Alabama:

You are hereby commanded to summon John Parham to appear at the next term of the Circuit Court to be held for said county on the third Monday after the fourth Monday of October next, at the place of holding the same, then and there to answer the complaint of Woodruff & Parker.

Witness, Augustus Brooks, clerk of said court, this 1st day of November, in the year of our Lord one thousand eight hundred and sixty-six.

Issued 1st day of November, 1866.

A. BROOKS, *Clerk.*

Service accepted—

JOHN PARHAM,
Tax Collector.

And on the 29th day of December, A. D. 1866, the following judgment was rendered in said cause, to wit:

Judgment.

WOODRUFF & PARKER,
vs.
JOHN PARHAM.

This day came the parties by their attorneys, and by agreement this cause is submitted to the court, upon an agreed statement of facts, which is on file in the cause and signed by the attorneys,
3 and which is hereby made a part of the record of the cause,

and the same being seen and understood by the court. It seems to the court, that upon said facts, so admitted, the defendant is entitled to judgment. It is therefore considered by the court, that the defendant go hence and recover of the plaintiffs his costs in this behalf expended.

Bill of Exceptions.

WOODRUFF & PARKER,
vs.
JOHN PARHAM.

Be it remembered, that on the trial of the above cause, the facts were all admitted as is shown by the paper hereto appended, and made a part of this bill of exceptions, entitled "agreed case" in this cause, and the cause was submitted for decision by the court on said facts, and the court thereupon held that the defendant was not liable, and rendered judgment against plaintiff for costs. To which ruling of the court the defendant excepted and tendered this his bill of exceptions, which he prays may be signed and sealed and made a part of the record, which is done accordingly in term time, this 29th day of December, A. D. 1866.

[SEAL.]

C. W. RAPIER,
Judge 6th Circuit, presiding.

Agreed Case.

Circuit Court—Mobile County.

WOODRUFF & PARKER,
vs.
JOHN PARHAM.

It is agreed in this case that the defendant is the duly appointed and qualified tax collector of the city of Mobile; that the city of Mobile is a municipal corporation, existing under the laws of Alabama. The charter thereof, approved 2d February, 1866, is
4 made a part of this agreement. It is agreed that said corporators, claiming to act under the authority of said charter, passed an ordinance on the subject of taxation for city purposes, and thereby levied a tax of 50 ct's on every one hundred dollars of the gross sales of merchandise sold within the city of Mobile, the ordinance upon this subject, pages 196 to 209, of the municipal law is made a part of this agreed case. It is agreed the plaintiffs are merchants, engaged in business in the city of Mobile, they are engaged as auctioneers and commission merchants. In the course of their business, and prior to the commencement of this suit, said plaintiffs for their own account, or as consignees and agents for others, have imported, or received from States of the United States, other than the State of Alabama, and from beyond the limits and jurisdiction of the State of Alabama, to wit, from the States of New York, Massachusetts, Pennsylvania,

Ohio, Mississippi, Georgia and Louisiana, large quantities of goods and merchandise, the product or growth of said States, and sold the same in Mobile, to the amount of $300,000 and that a tax thereon of 50 ct's upon the hundred dollars, amounts to the sum of $1,500. All of said goods were sold by said plaintiff in Mobile, to consumers or purchasers in the original packages, as they were received and imported into Alabama from said States, and they have sold none of said goods in broken packages or at retail, but have dealt in such goods, which consisted mainly of liquors, dry goods and tobacco, solely and only as they were imported in such original and unbroken packages into the city of Mobile and State of Alabama.

Said defendants has demanded of said plaintiffs the said amount of $1,500 00 as the tax legally due to the said city of Mobile, under and by virtue of the legislation, State and municipal, hereinbefore referred to; said plaintiffs have refused to pay said tax so demanded upon the allegation that the imposition thereof is illegal, and beyond the constitutional power of the State of Alabama to authorize, and of said municipal corporation to demand.

To enforce the collection of said tax and for no other purpose the said defendant in his said official character as tax collector has levied upon and seized into his possession the goods in the complaint mentioned.

It is agreed that either party may refer to any statute of Alabama, and ordinance of the city of Mobile, that he may have occasion to use.

If it be the opinion of the court that the tax herein described is constitutional and within the right and power of said city of Mobile to demand and enforce, then judgment shall be entered against the plaintiff for the costs of the suit; but if it be the opinion of the court that said tax is illegal and ought not to be enforced, then judgment shall be entered for plaintiffs and against the defendant for the sum of $2,100 damages and costs of suit.

The plaintiff contends that the tax claimed of them and the statute of Alabama authorizing the same, are in violation of the Constitution of the United States. Paragraph 2, section 10, article 1.

It is agreed that either of said parties may appeal from the judgment that may be rendered in the cause to the Supreme Court of Alabama at the first session thereof after the rendition of judgment by said Circuit Court, and the cause there argued and determined without further citation or delay.

D. C. ANDERSON.
S. S. SEMMES, *City Att'y.*

Agreement.

In this case we agree that either party may take an appeal to the Jan'y term, 1867, of Supreme Court of Alabama, without further notice.

Mobile, Dec'r 29, 1866.

ANDERSON, HAMILTON, SMITHS & HERNDON.

Appeal Bond.

THE STATE OF ALABAMA, *Mobile County:*

6 Know all men by these presents, that we L. T. Woodruff, G. M. Parker, and Moses Waring, are held and firmly bound unto John Parham, heirs, executors or administrators, in the sum of ten thousand dollars for the payment of which we jointly and severally bind ourselves, our heirs, executors or administrators, firmly by these presents. Sealed with our seals and dated this 18th day of February, 1867.

The condition of the above obligation is such that whereas the above bound L. T. Woodruff, and G. M. Parker, has this day applied for and obtained an appeal returnable to the January term, 1867, of the Supreme Court of Alabama, to supersede and reverse a judgment recovered by the said John Parham against the said Woodruff and Parker, at the fall term, 1867, of the Circuit Court for Mobile County, for five thousand dollars besides costs. Now if the said Woodruff and Parker shall prosecute to effect their said suit in the Supreme Court of the said State of Alabama, and shall pay and satisfy such judgment as the Supreme Court shall render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

WOODRUFF & PARKER. [SEAL.]
MOSES WARING. [SEAL.]

Citation in appeal.

THE STATE OF ALABAMA, *Mobile County*:

To the Sheriff of Mobile County, greeting:

Whereas, at a term of the Circuit Court of Mobile County, held on the third Monday after the fourth of October, 1866, in a certain cause in said court, wherein Woodruff & Parker are plaintiffs, and John Parham is defendant, a judgment was rendered against said Woodruff & Parker, to reverse which judgment the said Woodruff & Parker have on this day applied for and obtained from this
7 office an appeal returnable to the next term of our Supreme Court of the State of Alabama, to be held at Montgomery on the first Monday of January next, and the necessary bond having been given by the said Woodruff & Parker, with Moses Waring as surety. Now you are hereby commanded without delay to cite the said John Parham, or Messrs. Smiths & Herndon, attorneys, to appear at the next term of our said Supreme Court to defend against the said appeal if they think proper.

Witness, Augustus Brooks, clerk of said Circuit Court of said county, this 18th day of February, 1867.

AUGUSTUS BROOKS, *Clerk.*

We accept service of above citation in appeal and waive copy.
SMITHS & HERNDON, *Pl'ff's Att'y.*

STATE OF ALABAMA, *Mobile County.*

I, Augustus Brooks, Clerk of the Circuit Court of Mobile, and for the county and State aforesaid, do hereby certify that the foregoing is a true and complete transcript of all the proceedings had in said cause, as the same remains of record in the said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, this eighteenth day of February, A. D. 1867.

Attest:

[SEAL.] AUGUSTUS BROOKS, *Clerk.*

On the body of this transcript is endorsed the following:
Filed, February, 26th, 1867.

PHELAN, *Clerk.*

8 *Appeal from Circuit Court of Mobile.*

A copy of the assignment of errors.

WOODRUFF & PARKER
vs.
JOHN PARHAM.

Comes the appellant by his attorney and shows to the court, that in the record of the proceedings of said Circuit Ceurt, there is error in this: That said court rendered judgment for the defendant below when it should have rendered judgment for plaintiff, wherefore said appellant prays said judgment may be reversed, and for nothing held.

HAMILTON, *Att'y appl't.*

Supreme Court of Alabama.

WOODRUFF & PARKER
vs.
JOHN PARHAM. } 1st Div. 3,321.

THURSDAY, *February 28th*, 1867.

Came the parties by their attorneys, and this cause being duly called, is submitted for a decision.

Opinion of the Court, delivered by A. J. Walker C. J.

In this case, the constitutional power of a municipal corporation to tax the sales of articles brought into this State from other States of the Union, when sold in the form, bulk and packages in which they were brought in, is involved. The appellant claimed in the
9 court below, as he does in this court, a right of exemption from such tax, under the second paragraph of the tenth section

of the first article of the Constitution of the United States. He further claims here, as he did in the court below, that the law or ordinance under which such tax was levied, contravenes the constitutional provision above stated. The question of the exemption from taxation claimed, and of the constitutionality of the law or ordinance under wich the tax was levied, arose in the court below, and was decided against the appellant upon the authority of our decision in Hinson vs. Lott, in manuscript. We decide, that the appellant has not the right of exemption from taxation claimed, and that the law or ordinance under which the tax upon sales, in the original package and bulk, of articles brought into the State from other States, was levied, does not contravene the Constitution of the United States, and we affirm the judgment of the court below.

Supreme Court of Alabama.

WOODRUFF & PARKER *vs.* JOHN PARHAM. } 1st Div. 3,321.

WEDNESDAY, *June 5th*, 1857.

Came the parties by their attorneys, and the record and the matters assigned for error therein, being argued and examined, it appears that the appellee, John Parham, claims to exercise an authority as tax collector of the city of Mobile, under the ordinances of said city, which were passed in pursuance of an act of the general assembly of the State of Alabama, entitled "An act to incoporate the city of Mobile, approved 2d of February, 1866, and by virtue thereof, to collect of appellants a percentage tax on the gross amount of the sales made by them, in the city of Mobile, of goods imported by them into Alabama from other States of the Union, which sales have been made of the goods so imported, in unbroken packages, and in the same form and condition as imported; and said appellants insist that said authority so claimed, and said statutes so authorizing it, are repugnant to the Constitution of the United States, article 1, section 8, paragraph 3, and article 1, section 10, paragraph 2. And this is the only question presented for the decision of this court. Upon consideration whereof, and the argument of counsel, it seems to the court, that in the record and proceedings of said Circuit Court of Mobile County, there is no error.

It is therefore considered by the court here, that said judgment of said Circuit Court be in all things affirmed, and that said appellee recover of said appellants and of Moses Waring, surety, on the appeal bond, the cost of this court and said Circuit Court.

THE STATE OF ALABAMA, *Supreme Court*:

I, John D. Phelan, Clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing ten pages contain a true, full and complete transcript of the record and proceedings in a

cause pending in said Supreme Court, wherein Woodruff and Parker are appellants, and John Parham, tax collector of the city of Mobile, is appellee, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Supreme Court, this 10th day of August, A. D. 1867.

[SEAL.] JNO. D. PHELAN, *Clerk*.

[$2 State stamp.]

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

JOHN W. HINSON
vs.
LOTT, Tax Collector of the County of Mobile. } *No.* 130.

WOODRUFF & PARKER
vs.
PARHAM, Tax Collector of the City of Mobile. } *No.* 129.

The matter complained of in the *first case* is the tax authorized by the act 22d February, 1866, ~~imposing a tax~~ upon all dealers in spirituous liquors, to be paid before the same are offered for sale. The act is referred to in Mr. Hamilton's brief, p. 2.

The judgment of the Supreme Court of the State shows, that the liquor on which exemption is claimed was received by the appellant from the States of Louisiana and Ohio, and the tax demanded before it should be offered for sale. This act was held not to be repugnant to the Constitution of the United States.

The claim, as stated by the appellant himself, is—

That a portion of the whiskey he received from Dexter, of the State of Ohio, to be sold for his account.

That another quantity introduced by him was purchased in the State of Louisiana; that another quantity was imported from a foreign country; and "that he now holds all of the said liquors in the same packages in which they were imported, and in that condition has offered and now offers

them for sale; *and he also claims the right to sell said liquors so introduced by him into the State in smaller quantities than by the barrel, and offers to sell in smaller quantities his said liquors.*" (Rec. 5.)

In the opinion of the court, (p. 11,) it is held that the tax could not be levied on the liquors imported from a *foreign country*, while they remain in the original casks of importation. To that extent and no further he is to be protected. As to the liquors introduced from other States, there was no exemption from the tax.

In the *second case*, the matter complained of arises under the act which levies a tax of 50 cents on every hundred dollars of the gross sales of merchandise sold in the city of Mobile.

The complainants are engaged in business as auctioneers and commission merchants. On their own account, and as agents and consignees of others, they had received large quantities of merchandise from the other States of the Union, the product or growth of said States, and sold the same to the amount of $300,000 in the original packages. These goods consisted mainly of liquors, dry goods, and tobacco. (p. 7.)

This act was also held by the Supreme Court of the State not to be in conflict with the Constitution of the United States.

The Constitution provides, that "the citizens of each State, shall be entitled to all privileges and immunities of citizens in the several States."

In the nature of things, citizens of another State, can never claim *greater immunity*, than is accorded by a State to its own citizens.

All who come within a State, are to share alike the burthen of taxation, by means of which, the Government is sustained.

If a citizen of Louisiana bring into Alabama 100 pieces of cotton cloth, the manufacture of that State, and sell the

same, why should he be exempt from the tax on sales, while a citizen of Alabama who sells 100 pieces of cotton cloth, the manufacture of the State, is compelled to pay the tax?

If the cotton cloth had been imported from a foreign country, the importer would be exempt from the State tax by reason of his *contract with the Federal Government* and the payment of a tax to it.

But the case before us may be put in a still stronger light. A and B are both *citizens of the same State.* They each sell 100 pieces of cotton cloth. A who sells the article manufactured in the State is compelled to pay the tax, while B maintains that the Constitution of the United States protects him from it, because he purchased his cloth in a neighboring State.

If this be the true view, then a *greater "privilege"* is secured to the citizen of Louisiana within the State of Alabama, than is enjoyed by its own citizens. Further yet, this superior privilege is conferred by the Louisiana vendor, upon the citizen of the State, his vendee.

What are "imports" which the Constitution inhibits the State from taxing? In one clause it is provided, that "immigration or *importation* of such persons, as the States think proper to admit, shall not be prohibited by Congress prior to 1808."

Could Congress after this period have prohibited the carrying of slaves from Louisiana to Alabama?

This depends upon the meaning of the word "importation."

If "importation" is not exclusively applied to foreign countries, but equally includes inter-State commerce, then Congress had the power.

The fact that during the violent slavery agitation, no such power was claimed to be exercised by Congress, is the strongest evidence that this term relates alone to persons brought from foreign countries.

Then, in the subsequent section of the Constitution, it is

provided, that "no State, without the consent of Congress shall lay any impost or duty on *imports* or exports."

Is there anything to induce the opinion that a different sense was intended to be attached to the word "imports" as used in this section from "importation" in the preceeding one?

The debates show, that the great object which was aimed at, in the adoption of this provision, was to secure the western States, which from their geographical position could not import for themselves, from the exercise of the taxing power of the States whose ports they would be compelled to use. A power which wielded for selfish ends, would place them at the mercy of the importing States.

These considerations alone induced the transfer of the power to the Federal Government, which, as the common parent of all the States, would so arrange the import or duty as to make it bare equally.

The States being thus excluded from the power, it would seem to follow that goods destined from one State to another could not be taxed in their *transit* through a third State.

Taney, C. J. in assigning the reason, why the tax should not be laid on goods while in the hands of the importer says: "The greater part of goods imported in some of the cities is not owned by citizens of the State, but by citizens of other States; and while they are in the hands of the importer they may be regarded as merely in transit, and on their way to distant cities, &c., for which they are destined.

License cases p. 575.

Mr. Madison, moving to transfer the words "nor lay imposts or duties on imports" from article 13, where the consent of the Legislature may license the act, to the 12th article, which will make the prohibition on the States absolute, observed. "That as the States interested in this power, by which they could tax the imports of their neighbors *passing through their markets*, were a majority, they

could give the consent of the Legislature to the injury "o other States."

Mad. Papers 3 Vol., 1445.

We say, therefore, that a tax which *does not discriminate* against goods brought from another State, which does not operate upon goods *in transit to other States*, but only is imposed on all sold in the State, in nowise countervails that harmony and equality intended to be secured by the Federal Constitution.

Thus far on principle, let us now turn to the adjudications.

In Brown vs. Maryland, the State tax was assailed, because it imposed a license fee on the *importer of foreign goods*.

The court held the act to be unconstitutional. This was properly all that could be judicially determined. When, therefore, the Chief Justice adds: "We *suppose* the principles laid down in this case apply equally to importations from a sister State," he announced only an impression of his own mind on a great question which was not before him for decision, and which was therefore not argued at the bar.

The power of taxation is as vital to the existence of the State government as it is to the existence of the Federal. There is but one express limitation to it, and that is found in the clause quoted. There is also a limitation implied from the grant of powers that inhibits the taxation of the instruments and means by which these delegated powers are exercised.

Beyond this the State power is co-extensive with Federal. The same subjects are equally under the authority of both.

This is strongly expressed by Alex. Hamilton: "I am willing to allow in its full extent the justice of the reasoning which requires that the individual States should possess an independent and uncontrollable authority to raise their own revenue for the supply of their own wants, and making this confession I affirm that with a single exception of duties on

imports and exports they would, under the plan of the Constitution, retain that authority in the most absolute and unqualified sense, and that an attempt on the part of the General Government to abridge them in the exercise of it, would be a violent assumption of power unwarranted by any clause or article of the Constitution." Federalist, No. 32.

In the case of Pierce vs. New Hampshire, 5 How., (license cases,) the appellant was indicted and convicted of selling a barrel of gin purchased in Massachusetts, and brought coastwise to his store in Dover.

On the trial, his counsel asked the court to instruct the jury, that the State act imposing the penalty was repugnant to the clauses forbidding a tax on "imports," and granting the power to Congress "to regulate commerce." (p. 555.)

This instruction was refused, on the ground, that the gin was *not a foreign article, and was, therefore, not an import,* in the constitutional sense. (p. 556.) This instruction was excepted to, and the case being carried to the Superior Court the judgment was affirmed.

On writ of error, under the 25th section, it was elaborately argued in this court, that this ruling of the court below was erroneous. The dictum of Marshall, C. J., in Brown v. Maryland, was strongly pressed. The character and effect of this dictum was also much commented on by counsel for the State. The very question now presented was thus fully discussed, and of necessity became the pivotal point upon which the decision turned. That decision having affirmed the judgment of the Superior Court necessarily affirmed the proposition, that the barrel of gin brought from Massachusetts into New Hampshire was not an import in the constitutional sense exempting it from State taxation.

This case was heard and decided in connection with the cases of Thurlow vs. Massachusetts, and Fletcher vs. Rhode Island, and differed only in the fact, that in the two last cases the conviction was for selling foreign imported liquors.

by the judges. Taney, C. J., after deciding the cases of Massachusetts and Rhode Island, says: "I come now to the New Hampshire case, in which a *different principle is involved*, the question, however, *arising under the same clause of the Constitution*."

Now what was this "different principle?" Let the judge speak for himself.

"The present case differs from Brown vs. State of Maryland in this, that the former was one arising out of commerce with foreign nations which Congress had regulated by law; whereas the present is a case of commerce between two States, in relation to which Congress has not exercised its power."

"The law of New Hampshire acts directly upon an *import from one State to another while in the hands of the importer for sale*, and is therefore a regulation of commerce." "The question, therefore, is, whether a State may make such regulation confined to its own territory for its own interest. (p. 578.)

We now call attention to the several opinions delivered

After a full consideration of the question, the Chief Justice concludes:

"Upon the whole, the law of New Hampshire is, in my judgment, valid; For although the gin sold was an *import from another State*, and Congress had clearly the power to regulate such importation, yet, as it has made no such regulation, the traffic in the article may lawfully be regulated by the State as soon as it is landed in its territory." p. 586.

Judge Taney does not, in express words, say that "imports" in this clause of the Constitution refers to foreign commerce, but his whole decision and his final judgment are conclusive upon this point.

The next opinion in order is that of *Judge McLean*.

Commenting upon the dictum in Brown vs. Maryland, he says: "This remark of the Court was incidental, and the

point not necessarily involved in the decision. Whilst the remark cannot fail to be considered with the greatest respect, yet it cannot be received as authority. It must have been made with less consideration than the other points ruled in this important case."

The Judge then states the reasons for holding that the prohibition extends only to foreign commerce. In referring to the decision in Brown's case, he says: "Neither the facts nor the reasons of that case apply to a person who transports an article from one State to another. In some cases the transportation is only made a few feet or rods, and generally is attended with little risk and no duty is paid to the Federal or State Governments, and why should property when conveyed over a State line be exempt from taxation which is common to all other property in the State?" pp. 594, 595.

Catron, J. "Had the gin imported been an 'import' *from a foreign country*, then the license law prohibiting its sale by the importer would be void. The inquiry then is, did it stand on the foot of an "import," coming as it did from another State?" p. 601.

In his concluding summary of points, we have the following: "The State law of New Hampshire was constitutionally passed because of the power of the State to regulate, there being no regulation of Congress in existence, to which the State law was repugnant." p. 609.

In this opinion, *Nelson, J.*, concurred. p. 618.

Woodbury, J., in delivering his separate opinion, says: "It has been contended that the sum required to be paid for a license is in the nature of a duty on imports, and thus in conflict with the Constitution as settled in Brown vs. Maryland. It is conceded that a State is forbidden "to lay any duties on imports." But the statutes in question do not purport to tax imports from abroad, or imports *from another State. The last is not believed to be referred to in the Constitution.* p. 623.

Daniel, J. "Imports in a political or fiscal, as well as in common practical acceptation are properly *commodities brought in from abroad.*" p. 614.

A separate opinion was also delivered by *Grier, J.*, but without particular reference to the point now made.

I ask attention to the fact that while there was contrariety of argument in the separate opinions, *there was no difference of opinion as to the constitutionality of the State law.*

The character of the act will be found at p. 555: it provides a penalty for selling without a license.

It is the precise character of the statute passed upon in Brown vs. Maryland, where it was held that such a license tax imposed upon the importer of foreign merchandise was in its legal effect a tax upon "*imports.*"

The statement of the case by Judge Parker, pp. 555–6–7, shows distinctly that the defence was rested upon the ground that the statute was repugnant to the Constitution prohibiting the States from taxing imports; that the Court instructed the jury that the statute was not repugnant to the Constitution "*because the gin was not a foreign article, and was not imported into,* but had been manufactured in the United States." This judgment was affirmed in the Superior Court of Judicature in the State, and was affirmed here.

It necessarily follows that if the gin brought into New Hampshire from Massachusetts was an "import" within the meaning of the Constitution, then the license tax required by the State was a tax on "imports," and *void* under the decision in Brown vs. Maryland.

The decision maintaining the *validity* of the act is therefore conclusive of the position that the gin was not an "import."

This detailed statement of the case of Pierce is made in the belief that it is decisive of the cases now presented.

The same doctrine has been held by the State courts.

State vs. Pinckney, 10 So. Ca., (Richard,) 474.

Cumming, Savannah R. M. Chart., 26.

Harrison vs. M. & C., Vicksburg, 3 Sm. & M., 581.
Beall vs. State, 4 Black, 107.
Paddleford vs. Savannah, 14 Geo., 438.

The only cases relied on by appellants for a contrary doctrine are the State of Louisiana vs. Kennedy, 19 An. L. R., 397, and Almy vs. California, 24 Howd., 169.

The opinion in the latter case was given by Taney, C. J., who delivered the leading opinion in Pierce's case. (Supra.) No reference is made to that case. There is no statement of the facts reported. There is not the slightest allusion in the argument of counsel to the question we are considering. There is no reference to it in the decision itself. On the contrary, many of its expressions show that the question in the case was considered as one referring to *foreign commerce.*

"We think (says the Chief Justice) that this case cannot be distinguished from Brown vs. Maryland, and this decision *has always been regarded and followed as the true construction of the clause of the Constitution now in question.*"

After describing Brown as an "importer of certain *foreign* articles and commodities," and as against whom a license tax was held invalid, he says: "*So in the case before us,* if the tax was laid on the gold exported, every one would see that it was repugnant to the Constitution." A tax on the bill of lading, though differing in form, is in substance the same thing.

"A bill of lading is necessary to the shipment. It is hardly less necessary than casks to cover tobacco, or bagging to cover cotton, when exported to a *foreign country.*"

Again, "a bill of lading, or some equivalent in writing, is invariably associated with every cargo of merchandise exported to a *foreign country,* and *consequently* a duty upon that is in effect a duty on the article exported."

It is very evident that the judge treated the question as referring to exports to a *foreign country.*

We submit that this decision can have no effect in over-

ruling what had been decided in the case of Pierce by the very same judge.

The case cited from Louisiana is the solitary case to be found in which this question has been decided in favor of the views of the appellant. That case was decided in 1865, and was argued by the same learned counsel who files a brief in this case.

This decision, so far as the point under discussion is concerned, rests solely on the assumption that as the Court, in Almy's case, had affirmed the decision in Brown *vs.* Maryland, they thereby affirmed the dictum of Judge Marshall, "that the principles laid down (in Brown's case) apply equally to importations from a sister State" as the "settled doctrine on the subject."

The decree against Hinson, which was affirmed by the Supreme Court, maintains the constitutionality of the tax in reference to the liquors which were imported from the *States of the Union.*

How does this case differ from Pierce *vs.* New Hampshire? In the latter case, the law prohibited the sale, in any quantity, without a license. In this, a tax is the condition of the sale. There being no practical difference in these two acts, the unanimous decision of the Court in favor of the constitutionality of the law of New Hampshire equally covers the case in hand.

In the case of Woodruff & Parker, where the tax is on the "gross proceeds of sale," the tax is unobjectionable. These persons are citizens of the State, engaged in the business of auctioneers. They sell goods for others, and for themselves. They claim exemption because they sell goods in the same form or packages as they receive them from the adjoining States. Are they, for this reason, beyond all State taxation? Why should not their occupation as auctioneers be taxed in common with all others? Their business is protected by the State government,

and their reciprocal obligation is to contribute to its support.

It is to be noted that this tax is not levied on the articles imported, but on the proceeds of their sale. It is in its nature a tax on income or a tax on occupation measured by income. That a portion of that income may be derived from imported goods can make no difference.

"Undoubtedly, (says Taney, C. J.,) a State may impose a tax upon its citizens in proportion to the amount they are respectively worth; and the importing merchant is liable to the assessment, like any other citizen, and is chargeable according to the amount of his property, whether it consists of money engaged in trade, or of *imported goods which he proposes to sell*, or any other property of which he is the owner; but a tax of this description stands upon a different footing from a tax on the thing imported, while it remains a part of *foreign commerce* and is not introduced into the mass of property in the State." (5 Howd., 576.)

And again, the same learned judge says, in the Passenger cases—commenting on Brown *vs.* Maryland—"and even with regard to the importer, that case did not decide that he was not liable to be taxed for the amount of his capital employed in trade, although these imports were part of that capital." (p. 491.)

But let us enquire what damage or loss is suffered by the owner of the goods? Does the tax fall upon him? If the tax was so large as to affect the sale—all sales being equally taxed—the amount of the tax would enhance the price. A law which placed a tax on goods in the hands of A, while it left untaxed the same character of goods in the hands of others, would doubtless tend to diminish A's goods; but, where all alike are equally taxed, the duty will fall on the consumer, if it is sufficiently large to affect the price at all. To become mischievous, either constitutionally or practically to commerce, a tax must discriminate as to the subjects of it.

It may be admitted that a State cannot, with a view to encourage its local manufactures, prohibit the use of foreign articles or impose such a regulation as shall effect a prohibition, but it may tax such property, as it taxes other and similar articles in the State, either specifically or in the form of a leave to sell. (McLean, J., p. 592.)

In the case of Nathan *vs.* Louisiana, the act of the State provided that "every exchange broker shall pay an annual tax of $250." It was contended that, as the appellant dealt solely in foreign bills of exchange, the act operated as a tax on commerce; but this Court held—

1. That this was not a tax on bills of exchange, but on the business of a broker.

2. That the right of the State to tax its own citizens for the prosecution of any business or profession has not been doubted. (8 Howd., 80.)

It need not be denied that, under the grant of the commercial power, Congress might provide for exemption from State taxation, incidental as well as direct, of all property carried from one State to another; but this grant does not operate, *proprio vigore*, to divest the States of all right to act upon the subject. In the absence of any act of Congress with which the State law conflicts, that law will be maintained. (U. S. *vs.* Railroad Bridge, 6 McLean, 517.)

In the late case of Crandal *vs.* State of Nevada, this Court held that under the power to regulate "commerce among the States," Congress had authority to pass laws, the operation of which would be inconsistent with the tax imposed by the State; but they had passed no such laws. It was therefore held that, inasmuch as the tax did not, of itself, institute any regulation of commerce of a national character, or which had a uniform operation over the whole country, it was not repugnant to that clause of the Constitution. 6 Wall., 43.

The power to regulate commerce does not confer on Con-

gress the right to tax it, nor prohibit the States from taxing it in their own ports.

The authority of Congress to tax it is derived from the express grant in the 8th section of the 1st article, and the inability of the States to tax it is derived from the express prohibition of the 10th section of the same article.

The grant of power to regulate commerce did not prohibit the States from levying imposts and duties upon imports brought into their own territories. It did not apply to the right of taxation in either sovereignty—the taxing power being distinct from the regulation of commerce; and the right of taxation in the States remaining over every subject where it before existed, with the exception of those only expressly prohibited. Taney, C. J., Passenger Cases, 479.

It would, therefore, be no valid objection to an act to say that it imposed a tax upon commerce, or the instrument or vehicle of commerce. To render it unconstitutional, it must be shown to be a tax on imports or a duty on tonnage—for these alone are prohibited. Gibbons *vs.* Ogden, 9 Wheat., 201.

The case of Brown *vs.* Maryland fixes a limit to State power, beyond which judicial interpretation should not extend it. To exclude the power of the State, two things are necessary: The goods must be in the hands of the original importer, AND in original packages. "Merchandise in original packages (say the Court in a late case) *once sold by the importer*, is taxable as other property." Purvear *vs.* Comm., 5 Wall., 479.

If, therefore, goods were purchased in New Orleans and New York from the importer, they would be taxable in those cities in the hands of the purchaser, though they remained in "unbroken packages." If thus taxable in those cities, why should they be exempt from taxation when brought into and sold in Alabama by her own citizens? If

not taxable in Alabama, they would be equally exempt when purchased and carried into Mississippi, and thus *ad infinitum*. To maintain this exemption, it would be necessary to establish that the only true test was the condition of the packages, and this would be to overturn the decisions of the Court.

It will not do to say that the power of taxation, so vital to the States, should be further restricted than as already stated, because the tax may have some indirect bearing on commerce. The power of the States over all property within its limits is complete, with the single exception already noted, and there is no Federal authority which has the right to impair it. 8 How., 83.

It is very true that this power may be abused, but this is no more an answer to the existence of this power than to any other; we must, then, rely for the prevention or correction of such abuse upon the nature of the Government itself. In imposing the tax, the Legislature of a State acts upon its own constituents, and this is "sufficient security against erroneous and oppressive taxation." McCullough *vs.* Maryland, 4 Wheat., 428.

We may repeat with emphasis now, what was said many years ago, that our system, as a whole, is a complicated one. "Two governments spread over the same territory, but for different purposes, must impinge upon each other occasionally. But the day has gone by when we need feel any alarm from the strength of individual States. Virginia once held the twelfth of the political power of the Senate; now she holds but the thirtieth, and her relative importance to the Union has waned beyond that proportion. The States, at every advance of the power and strength of the Union by an increase of the members of the Confederacy, lose something of their relative importance and comparative strength. They go backward in the process, while the Confederacy goes forward. This is a warning to us to take no-

thing from the power of the States to add to the power of the Union, for in the States lies the strength of the Union."

We submit the following propositions:

1st. That goods brought into a State from another State of the Union are not imports in the constitutional sense.

2d. That if they were, a tax upon all sales of goods within the State is not a tax on imports.

3d. That goods imported from foreign countries are subject to State taxation in the hands of the first purchaser from the importer, whether in the original package or not.

4th. That goods thus purchased from the importer are not again entitled to exemption from State taxation by being carried from one State to another.

5th. That though the acts in question may affect the regulation of commerce, their invalidity can only be maintained by showing a direct repugnance to some act of Congress.

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